IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4445 OF 2005

Maruti Limbaji Misale
& Ors. . .. Petitioners.

vs.

Shri Bapu Yadav Rajguru
& Ors. .. Respondents.

Mr. P.K. Dhakephalkar with Amol P. Mhatre
for petitioners.
Mr. M.S. Lagu for respondents nos. 1 to 3
and 5 to 8.

CORAM : S.U. KAMDAR, J.
DATE : 28th November, 2005.

P.C.:

. Rule, returnable forthwith.

2. Heard parties.

3. In the present case pursuant to the election conducted of the trust change report no. 449 of 1999 was filed before the Assistant Charity Commissioner. By an order dated 17.5.2000 the

Assistant Charity Commissioner accepted the report and the appeal therefrom also is disposed of by an order dated 4.4.2001. A second appeal was filed before the Additional District Judge, who by his order dated 7.4.2005 allowed the appeal and set aside the order of the Assistant Charity Commissioner and the Joint Charity Commissioner in appeal and has remanded the matter back to the Asst. Charity Commissioner for decision afresh. After remand, while considering the Change Report No. 449 of 1999 the Assistant Charity Commissioner by the impugned order dated 27.6.2005 has passed an interim order by which the management and administration of the trust has been taken away from the present trustees and handed over to the original trustees purportedly as an interim arrangement. The order passed by the Asst. Charity Commissioner is per se bad in law and ex-facie erroneous. The Asstt. Charity Commissioner was required to hear the main application of Change Report No. 449 of 1999 and he was not entitled to set aside the election as an interim arrangement after a period of five years when the Committee is already functioning and managing the said trust. In that view of the matte, the impugned order dated 27.6.2005 passed by the Asstt. Charity Commissioner is unsustainable in law. The same is hereby set aside. The Assistant Charity Commissioner is directed to decide the Change Report No. 449 of 1999 which is pending

before him finally pursuant to the remand order passed by the order dated 7.4.2005. Petition is made absolute accordingly. No order as to costs.